CITIZENSHIP

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CITIZENSHIP

A BOOK FOR

CLASSES IN GOVERNMENT AND LAW

BY

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PREFACE.

IN these times when so many are proclaiming that civil government is a burden which ought not to be borne, we cannot too carefully study the basis on which the whole structure of government and law must rest. This little book is designed as a help to such study. I have, therefore, not confined myself in it to the rights and duties of citizens as defined by statutes, though the larger part of the book is given up to these; but I have sought for a broader view of citizenship as shown by the fundamental principles of society and by the deep groundwork of the human life itself. I do not think the profoundest considerations out of place in an elementary text-book, for even if they are not at first apprehended in their full significance, their light should not be entirely obscured at the outset, and should become more and more apparent as study and years increase. I hope that what I have

written may not be altogether beyond a child's apprehension, nor altogether below the thought of a student much more mature. I have striven to be clear and comprehensive, but at the same time compact, leaving much for the teacher and much also for the pupil to do. A good text-book does not aim to be an exhaustive treatise. It draws its theme in outline. It suggests as well as expresses. It stimulates inquiry. Like a good teacher it points to a way which it does not always pursue. It is good not more for the work which it does for those who use it, than for that which it leaves and leads them to do for themselves.

In the broad view I have taken of citizenship, the term includes both International Law and National Law; and I have considered the former of these two divisions first, believing this to be the more suggestive and fruitful way. If, however, any teacher who may use the book thinks otherwise, he can easily reverse this order for his classes. If his classes are in college, it should be feasible to begin at the beginning and make first a thorough study of the principles laid down in the General Foundation. But it may be better, in classes of an earlier grade, to pass cursorily over these

principles at first, coming back to them for farther study after becoming familiar with their detailed applications in International and National Law. I shall be thankful if what I have written shall lead to a larger reverence for the laws, which, as Sophocles says in the Antigone :[1]

> Live not to-day and yesterday, but evermore,
> And no one knows the time when first they came.

AMHERST, MASSACHUSETTS,
May, 1894.

[1] *οὐ γάρ τι νῦν γε κἀχθές, ἀλλ ἀεί ποτε*
ζῇ ταῦτα, κούδεις οἶδεν ἐξ ὅτου 'φάνη.
vv. 456, 457.

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CITIZENSHIP.

GENERAL FOUNDATION.

GOVERNMENT reaches everywhere. Not only human life upon the earth, but the earth itself and the stars are all governed. Everything made is under law.

Government Everywhere.

What then is government, and what is the meaning of law?

To govern, in the first sense of the word, is to steer, as a pilot steers a ship. Government guides. But more than this. It also brings to pass. To govern is not only to hold the helm, but to propel the ship. In a single word it is to control. Government is the power that controls. Or, meaning the same thing, we may say it is the power that rules.

Meaning of Government.

But what is the exact meaning of this? What is it to rule?

To rule is to set and to keep in order. But order points at once to origin. These two words have the same source. They are branches of one root. They both mean an arising, like that of

Order and Origin.

the sun or of the day. The origin of things and the discovery of their order both come to the beholder like the coming of the light, like the breaking of the day.

The oneness of these two is clearly seen if we closely note the real meaning of each. The order of things represents the pattern after which the things were made. There must be such a pattern for all things, else there could be something without a reason for it. This pattern was not made when the things were made, but was before them and determined how they should be made, as the pattern of a watch must be before the watch, and the watch must be made according to its pattern or it will fail. The world and everything in it, as well as a watch, must have its pattern after which it must be exactly fashioned.

A Pattern for all Things.

This pattern of anything is precisely what we mean by nature. The word nature literally means a birth or a bringing forth. Nature brings forth to the light that which had been hid in darkness, and is constantly carrying this forward to a more distinct disclosure. But the true reality thus disclosed, the true nature, is the living pattern which, as we study nature, constantly shows us more and more of its living power. All the power in nature is the power of those patterns of wisdom and beauty

Meaning of Nature.

hid in the All Wise until He brought them forth as the expression of his power to create and to control. He creates and governs all things according to their patterns which He possessed in the beginning of his ways before his works of old.[1] When these are brought forth it is the issuing of the light from the darkness. It is the crowning of the world with wisdom.

So we see that the pattern of anything is precisely that which makes the thing to be what it is. It is thus in reality its source. The order of things is, therefore, quite at one with their origin. Hence to govern, which is to control things as their patterns require, might be fitly called a continuous creation.

Every pattern has its exact requirement. The pattern of a watch requires that it be made in a certain way and that it work in a certain way, and unless these requirements be followed there could be no watch. So of all nature and of everything in it. Its pattern requires that it be brought forth and be ordered in a certain way and if this should not be, nature could not be.

The requirements of these original patterns — patterns of wisdom and truth — are what we call laws. They are what is laid — law means, literally, laid —

[1] Proverbs viii, 22.

upon that to which they belong, to set and to keep it according to its pattern. But as it is the pattern of things which determines their order, laws are nothing other than requirements or rules of order. The only definition of law which we need to have is that it is a rule of order. To know the true order of things is to know their law.

Meaning of Law.

It is not accidental that the word pattern and the word father have the same source, for the first meaning of these two is the same. In the pattern of things which is their origin is their proper procreation, and He who has the universal pattern before him, and makes the universe of things in accord therewith, is the Universal Father. Of him, and through him, and to him, are all things.

Pattern and Father the same Word.

Without question the author has authority over what he has made. The universal Father must be the universal king. Again language shows its deep meaning when we find that the word "king" is from "kin" and the king thus is the true kinsman, the source of kinship, that is the father.

In the universal kingdom we can clearly see two different worlds over which the universal Father rules. In one his wide creation knows as yet neither itself nor him, but is kept in order and beauty for the time,

if it shall ever come, when it shall have the open eye and the perfect liberty of the sons of God.[1] This is the world of nature as we commonly term it, a world of wondrous interest, but which we leave at present for that higher world which is conscious of its author and conscious of itself, and which can obey government with a full knowledge and a free choice. This is the world of intelligence, a world which may have we know not how many spheres, but which comes before us for our present contemplation only as the world of human intelligence upon the earth. The human family is everywhere under the government of the great king, and the laws of this government can be clearly seen if we carefully study the pattern after which the human life upon the earth was originally constituted, and by the requirements of which alone it can be orderly controlled.

The Universal Kingdom.

The Kingdom of Mankind.

This pattern is very different from anything else found on the earth. A jewel by itself alone is as bright and is worth as much as when one among many jewels. A tree growing alone in a field may have even more strength and beauty than when growing with many trees in a forest. But a human life alone would be marred and dwarfed

The Pattern of the Kingdom.

[1] Romans viii, 19–21.

and blighted. Man needs society for his true perfection. So important to a man is mankind that the ancients had a proverb, "One man, no man" (*Unus homo, nullus homo*), meaning thereby that a man's manhood would be impossible without his fellowship with other men.

Mankind a Fellowship.

But what do we mean by this? What is the fellowship so essential to a man's manhood? It is far more than that of one jewel with many jewels or of one tree with many trees. There could be no real fellowship among these. Fellowship, in its original sense, means joint ownership. It implies a community of interests, of rights, of obligations, and the fellowship which is not only the crown and glory but the real being and royalty of the human life is a reciprocity and interdependence which every member of the human family bears to every other. Each one is a fellow member of all the rest. So true is this that nothing can happen to one human being anywhere without affecting other human beings everywhere. No man liveth unto himself, and no man dieth unto himself. The human family is like the human body where the eye cannot say to the hand, I have no need of thee, nor again the head to the feet, I have no need of you. The union of men is the union of an organism wherein

Fellowship means joint Ownership.

every part is at the same time the means and end of all the rest.

Such is the pattern after which men are made, and the governing of men means the keeping of them in order according to this pattern. There need be no other justification of human government than is found in this its meaning and its grand design. That is the best government which best subserves this organic unity. That is the worst where this living fellowship is least regarded.

The Governing of Men.

This organic fellowship of the human family establishes among its members a community of rights and duties. In so far as each member of the organism is the end of all the rest — his good being the true outcome of theirs — he has certain rights which he can claim from them. And in so far as he is the means of all the rest — his power being needful for their perfection — he has certain duties which they can claim from him. The law of the organism, therefore, may be expressed in the community of these rights and duties, and the government of the organism is the power which sets and keeps these in their original order.

Human Life a Community of Rights and Duties.

The organism itself is what we mean by the state. The state is nothing other than the organic unity of

mankind. All the obligations which the state imposes, the place and work which it assigns, are nothing more nor less than the most perfect reciprocity and interdependence among its subjects requires. All the laws of the state do but express the principle of this organic relationship among men. The law of human society only affirms what place and work and obligations belong to men by virtue of the organic bond which holds them together. If truly law it does but represent and declare the principle of a brotherhood of human hearts. If it attempts anything other than this and seeks the good of one person or class, and not the good of all, it is tyranny, and not law.

This Organism is the State.

In this broad conception the state is one, and yet there are actually many states; as we say that man is one, while there are many men. But as the individual man is a man only as the universal manhood is mirrored and expressed in him, so the individual state is a state only as the universal state, the ideal state, finds itself typified and actualized therein. In other words a given community can only justify its claim to be a state on the ground that the organic unity of mankind requires its separate existence as such.

The Universal State and the Particular State.

Taking the state in its broadest aspect as embracing all mankind, the nations of the world are its members. Taking it in its narrower application as an individual state, its membership consists of the individual persons subject to its sway. But in either case our definition is appropriate. The state is an organic unity, and both the universal state and the particular state can be best treated under the broad classification of rights and duties, which are nothing other than the requirements of an organic fellowship. All the questions of human government upon the earth are questions of rights and duties. In their broadest relations they all resolve themselves into these two: What are the rights and duties of states respecting each other? and what are the rights and duties of states respecting their own subjects? This will therefore make our grand division to be:

International Law and National Law.

I. International law.

II. National law.

International law may be subdivided into that which expresses:

[1] The rights and the duties of nations in peace.

[2] The rights and the duties of nations in war.

National law, called also and more commonly municipal law, which is the law of a particular nation or state, has also two chief divisions:

[1] That which expresses the rights and the duties of the sovereignty, or the government;

[2] That which expresses the rights and the duties of the subjects, or the governed.

The first of these may be called public law, and the second, popular or private law.

Public law, therefore, is the body of rules for the orderly arrangement of the government, and private law is the body of rules for the orderly arrangement of the governed. Keeping this line of division clear we shall have the whole scheme clear.

Public law easily arranges itself under two heads:

[1] That which considers the rights of the government;

[2] That which considers the duties of the government.

The first of these is properly called constitutional law, and the second, administrative law.

Private law has also two chief divisions:

[1] That which expresses the rights and duties of the subjects respecting the government;

[2] That which expresses the rights and duties of the subjects respecting one another. The first of these two may be called political law, and the second civil law.

Political law, therefore, is the body of rules which orderly express the rights and the duties of the

subjects concerning the government, and civil law is the body of rules which orderly express the rights and the duties of the subjects concerning one another.

Still farther, political law has two divisions:

[1] That which expresses the rights;

[2] That which expresses the duties of the subjects concerning the government.

The rights will be found to be threefold: Those which the subject may claim concerning his religion, those which he may claim concerning his opinions, and those which he may claim concerning his political conduct. The duties are also threefold: the duty of obedience, the duty of service, civil and military, and the duty of tribute.

Civil law embraces two comprehensive classes of rights and duties which may be called respectively social and individual. The first of these has also two, and the second three lesser classes. The social rights are, the rights of voluntary compact, and the rights of natural relationship.

The individual rights are, the rights of person, the rights of property, and the rights of reputation.

The social duties are those which belong to voluntary compact and those which belong to natural relationship.

The individual duties are the duties concerning the person, the property, or the reputation of another.

This, then, is our scheme, which we now proceed more particularly to delineate.

I.

INTERNATIONAL LAW.

INTERNATIONAL law is the law which deals with rights and duties of nations concerning one another.

The organic unity of mankind makes each nation as well as each individual person at the same time the means and end of all the rest. Nations therefore have rights and duties concerning one another as truly as do individual persons.

It is interesting to note that this fact has never been widely recognized until modern times. The ancient world scarcely knew it at all. The nations of antiquity directed nearly all their relations with one another on the ground of constant hostility. A foreigner, because he was a foreigner, was an enemy, and the same word specified either. Nations did not consider one another as possessing rights and duties, but as having only powers, and these they exercised each in its own way, except as prevented by a stronger power. The difference between the ancient and modern world is in no respect more notable than in this.

In the modern world the sway of international law is recognized by all the ruling nations, by none of them, however, so prominently as by the United States, whose constitution expressly provides for defining and punishing offenses against it. This sway is also becoming all the while stronger and more minute. In recent times new precepts for the regulation of nations have been promulgated in an increasing degree and accepted as laws. There is no official body to enact or to enforce these, but as they dawn upon the thoughts of men their authority is acknowledged, and they are obeyed by the nations. Greed and passion are as strong in nations as in individual persons, and these have often broken through all barriers of international law; but it is observed — and this is especially true of recent times — that after such a rupture the broken bonds reassert themselves more positively and gain a stronger ascendency than before. There is hardly anything so impressive in the life of our times as the commanding and constantly increasing power of international law. It voices the sentiment of humanity, and is the majestic utterance of the universal state.

This utterance finds itself put forth in various ways. Sometimes it comes in treaties which different nations make with one another, and in which they express com-

prehensive principles by which they agree to be bound. Sometimes it appears in broad principles of legislation which individual nations adopt for themselves, and which are applicable to other nations as well. Sometimes it voices itself in broad decisions of courts where some great judge rises above and reaches beyond the national law, and lays down a judgment worthy also of international application. But by far the most important expressions of international law are found in the writings of great thinkers upon the subject. Quiet students, with no official claim to recognition, and nothing to give weight to their words but the wisdom of the words themselves, have thought out the rights and the duties of nations so clearly, and have expressed them so convincingly, that the nations themselves — though without any formal agreement to do so — allow themselves to be guided thereby.

But as all this is especially true of the modern in distinction from the ancient world, in like manner it belongs to the Christian in distinction from the unchristian nations, though in recent years the sway of international law has steadily extended itself through the Mohammedan and other portions of the unchristian world. International law in its ideal principles is as broad as mankind itself and is fitted to actualize everywhere the living brotherhood belonging to the

race. But this is best seen where the Christian gospel is known. It has its ascendency undoubtedly through the power of Christian influences, in the increasing prevalence of which is the hope of its universal rule.

We now take up its most important and most universally accepted applications.

[I.] In Time of Peace.

1. *Law of independence and non-interference.*

International law implies the right of national independence and the duty of non-interference. No nation can be altogether independent. This, the organic unity by which all are bound would forbid. But the fellowship of the nations which makes each dependent upon all the rest gives to each also a certain independence of all the rest. It is for the good of all that each one within a certain range should seek its own good in its own way. The limits of this range are set by the requirements of the organic unity, each nation having the right of independence so far and only so far as its duty to other nations permits. How far this reaches, international law more and more clearly defines.

This right of independence which all nations may equally claim includes

[1] The right of each nation to form its own government.

There is no one form of government which can be prescribed for all the nations. However it may be in the future, at present it is clear that different nations not only have, but need, different kinds of government. What kind will best meet its need each state must decide for itself. The right to form its own government and to frame its own laws is involved in the very existence of a nation, and no nation can lose this right but by its own act.

No Universal Form of Government.

[2] The right to control its own territory.

The territory within the borders of any nation belongs to the nation. Whatever rights thereto any of its subjects may have are subordinate to that of the nation which can take away these at its pleasure, though if this be done a reasonable compensation is due. This supreme right of a nation to its territory is called the right of eminent domain.

A nation may use its territory for any purpose it pleases, only controlled by the requirements of the organic unity. It may even cede it to another state with or without the choice of its inhabitants.

The territory which a state may control includes not only all the land within its borders, but the rivers and

bays and inland lakes and seas as well, together with the contiguous ocean within three miles from the shore. The open ocean is free to all the nations, though a ship anywhere upon it carries with it, to a certain degree, the territorial rights of the nation to which it belongs.

[3] The right to take its own course among the nations.

No nation has any right to any course which would work a wrong to any other nation. Its rights may never clash with its duties. Nevertheless, in dealing with other nations it may take, within certain lines, its own way. It may make engagements with one nation into which it refuses to enter with another. It may choose for itself whether its commerce shall be free or restricted, whether its military preparations shall be strong or weak, and whether it shall take one way rather than another to develop itself and grow in power. It may claim indemnity for wrongs against itself, and if need be the right to redress these wrongs.

[4] The duty of non-interference.

In the right of independence belonging to each state is clearly seen the duty of non-interference with the independence of another state. The right and the duty cannot be separated. No state has any authority over another state. The authority over all rests in

the universal state, and any interference of one with another can only be because the universal state requires it. Any interference with another in which one state engages only for its own advantage must be condemned.

As the universal state has no single representative, individual states assume to act in its behalf at their peril. And yet there are times when they must thus act. Cases occur where states by their own misconduct forfeit their right to independence and other states have a duty to interfere. In such instances there is great danger that the party attempting to redress a wrong may in so doing be led by greed and passion into greater wrong itself, but such a danger, though it may make the duty of interference more hazardous, does not make it any the less obligatory. We must remember that fellowship means joint ownership, and the fellowship of the nations does not permit any one nation to own even its independence by itself alone. When interference becomes a duty it may be a question upon what state or combination of states the duty devolves, but this can only be determined at the time. The interference in 1827 of England, France, and Russia to aid the Greeks in their otherwise hopeless struggle against the atrocities of Turkish misrule and oppression was justified at the time, and has since

been justified by the calm judgment of the Christian world.

2. *Law of international intercourse and comity.*

[1] The right of free intercourse.

The organic unity of the nations requires their freedom of intercourse. This is becoming more and more widely acknowledged. Many barriers formerly set up against the intercourse of nations have in recent times been taken down, leaving now among Christian nations well-nigh an open field. Through the Christian world it is now freely conceded that the subjects of one state have the right to travel and to reside in another state, to do business there and to enjoy themselves under the same protection of the laws and with the same advantages of the courts as its own subjects. This right goes so far as to include the right of expatriation and the right of naturalization, which are now adopted and practiced throughout the Christian world. The free intercourse of nations also involves the free navigation of rivers running through the bounds of different states, and this is now practically acknowledged. This right of intercourse does not, however, include the right to take an armed force across the territory of a friendly state without special permission.

But the intercourse of nations is specially conducted through official agents called variously ambassadors,

foreign ministers, envoys, etc., sent by one nation to represent it to another. To these agents certain immunities are granted, which are now so commonly accepted that they may be called established rights. Such agents are exempt from the laws of the land to which they are sent. If an ambassador in a foreign land commits a crime, however flagrant, he can only be sent home for trial and punishment. If he incurs debts or makes any contracts which he does not fulfill, he is left unconstrained by any law of the nation to which he is sent. No courts have any jurisdiction over him but those of his own land. His personal effects are also free from taxes and tariff dues, though his house may be subject to local taxation. The same exemptions belong also to his family and suite.

[2] The duty of comity.

As with individual persons, so with nations, comity is essential to freedom of intercourse. Indeed the words politeness and civility literally and originally belong to the procedure of nations. Nations owe one another respect and good will. The principles of the organic unity by which all are bound, require both friendly offices and a friendly spirit from each to each. Custom prescribes certain forms of national civility, as the saluting of flags, the etiquette of courts, etc. But the comity of nations reaches beyond all these ceremo-

nial observances. It goes so far as to give validity within the territory of one nation to the peculiar institutions of another, where there is occasion for this, and in so far as it can be done without injustice. Thus, a citizen of one nation, when traveling or residing within the bounds of another and carrying with him rights and privileges acquired under the laws of his own land, finds himself by the comity of nations protected in these, even where a different law prevails, unless they are of a nature positively prohibited by this law. If he is a criminal fleeing from justice to a foreign soil, the same comity requires that he be given up for trial and punishment to the authority from which he has fled, unless the crime with which he is charged be not classed as a crime by the laws of the land where he has sought a refuge. This is called the extradition of a criminal, provision for which is usually secured by special treaty. The comity of nations requires every courtesy by which the nations can be brought to a clearer recognition and a closer possession of their organic fellowship and brotherhood.

3. *Law of contracts and of good faith among nations.*

[1] The right to make treaties.

Nations have the right to make contracts with one another. Such contracts are called treaties. But all of these are subject to the same requirements as

attach to every other national procedure. A treaty which clearly violates the organic unity of the nations has no right to be made, or if made has no right to stand. But a treaty often brings out, in a clearer light than before, the true principles of this unity, and the body of treaties among civilized states offers important testimony to the actual requirements of international law. Treaties are usually negotiated by certain agents, but to be valid they must be ratified by the governments which these agents represent. When thus ratified they bind all who have made them, no party to a treaty having any right to withdraw from its engagements or to modify any of its stipulations without the consent of all the other parties.

[2] The duty of good faith.

Good faith means trustworthiness in keeping engagements. This all nations owe to one another. The right to make contracts which there is no duty to fulfill would of course be empty. There could be neither unity nor fellowship among the nations without good faith.

[3] The right to live in peace.

In a living organism, if one member suffer, all the members suffer with it, and if one member be honored, all the members rejoice together. In the organism of which the nations of the earth are members the weal

or woe of one is the common good or ill of all. No nation gains by what another loses. When one seems to profit by the damage of another this is, at the farthest, only for a time. In the end what one loses all lose. So close and vital are the connections of human life!

The organic unity of the nations therefore requires their perpetual peace. This the nations confess even when at war, since the only ground on which they can justify their war is that it is the necessary means to establish peace. In the modern and Christian world peace is recognized as the normal right of every nation.

[4] The duty to abstain from war.

The duty to abstain from war is just as broad as the right of peace. War may be necessary and on one side right, but can never be without a violation of duty somewhere. One of the parties in every war must be in the wrong. It may be right to resist a wrong or to redress a wrong by force of arms, but only thus can war ever become a duty. An appeal to arms should be the last resort.

[II.] In Time of War.

But war has its pattern and thus its requirements or laws. Not every exercise of force is right even in a righteous war. There is a right way and a wrong way to fight against wrong. How wars, if they exist,

should be carried on is, therefore, a most grave inquiry to which international law is steadily giving more exact replies. The question and its answers resolve themselves into two divisions: first, the way in which a war should be carried on by the combatants; second, the way in which it should be met by other nations.

1. *Law of combatants or belligerents.*

The way in which war should be carried on by the combatants.

War is an armed contest between nations to establish justice. An armed contest between private parties or between a nation and a band of individuals who have no national sovereignty, or such a contest without any interest of justice, is not war. The way in which war should be carried on by the combatants is shown by the following now established rules:

[1] War should be avowed and open.

A nation may not precipitate war upon another unawares. However just its appeal to arms, it would be unjust to make it without fair warning. Owing to the clear light — the facilities of intercourse and information — in which nations now live, a formal declaration of war, though desirable, is not at present thought necessary, but any nation beginning a war without having in some way disclosed its intentions thus to do, would meet the reproach of all the world. After hostilities have

begun and the parties have become watchful and wary of one another, a secrecy might be right which would be wrong in the confidence of peace and good will. But this has its limits. A secrecy which adroitness could not discover and circumvent would be beyond the pale of civilized warfare. Stratagem and deception may be lawful in war, but not treachery or breach of faith. Good faith must be kept even with an enemy. A spy takes his life into his own hands, and if discovered, is punishable by death. All secret incendiaries, all assassinations or poisonings, are forbidden by the present rules of war. Private killing is as truly murder in time of war as in time of peace. The soldiers of each party must wear their own uniform or distinguishing badge, that they may be known; and to use the uniform or the flag of an enemy for the sake of deceiving him would be everywhere condemned.

[2] It should be as little destructive as possible.

War has still, as it must ever have, its horrors, but these are now brought within bounds unknown to former times. The devastations and massacres which have made such dark chapters in history are not, we may fairly believe, to be repeated. Wanton destruction of property or life is no longer thought to be within the lines of legitimate warfare. The lives of persons who take no part in the pending hostilities are

to be as sacred in war as in peace, and the life of a soldier who has laid down his arms is to be shielded.

Such a soldier may become a prisoner of war, but he is not to be regarded as a criminal, and is to be treated with respect and kindness. Military necessity does not require cruelty, and therefore cruelty — inflicting suffering needlessly or out of revenge — is not tolerated by the present rules of war. The use of weapons whose wounds cause unnecessary suffering is attracting more and more consideration and condemnation. "Men who take up arms against one another in public war" — as the *Instructions for the Government of the Armies of the United States in the Field* puts it, — "do not cease on this account to be moral beings, or responsible to one another and to God."

The destruction or seizure of private property can only be justified when required by military necessity. The sacking of a place which has been taken by force, and all robbery and pillage are prohibited in the armies of the United States, "under the penalty of death, or such other severe punishment as may seem adequate for the gravity of the offense." [1]

[3] It must be carried on by lawfully commissioned forces.

[1] Instructions, etc., section ii, 44.

The right to take life or to inflict bodily harm belongs to the state, and not to private individuals. It is the state alone, therefore, which has authority to make war. All the forces engaged in war, and all their procedure in order to be lawful, must be commissioned and carried forward under the authority of the state. Private parties in time of war, who take up arms on their own account, put themselves outside all rules of war, and may be treated, if captured, not as prisoners of war, but as highway robbers and pirates.

2. *Law of non-combatants or neutrals.*

The effects of war are not limited to the combatants. The whole world feels them. The nations, therefore, not engaged in the conflict are interested in its cessation, and might take steps to bring the war to an end, or even to prevent its beginning. It would be a boon to mankind, and quite in line with the organic unity of the race, if, when any difficulty arises between two nations, other nations should engage that it be settled by other means than war. But however this may be in the future, the time for such a condition is not yet. As things now are, international law requires that when any nations are at war, other nations should keep aloof. The strictest neutrality is required of the non-combatants who are thus called neutrals, while the combatants

are called belligerents. Three rules cover the rights and duties of these as now understood in time of war:

[1] Neutral nations may not render either of the belligerents any aid in their war.

War does violence to the organic unity of the race, and parties to it may expect no aid from the outside world. Whether in the coming future aid may be properly rendered to one side or the other, in the interest of justice, or to bring the war to an earlier close, all agree at present that neither belligerent should have any help from neutral states. This doctrine of neutrality goes farther than that of impartiality. To be impartial might imply equal favors to both parties, but to be neutral requires that no favor be given to either.

[2] Neutral nations must take pains to keep all within their jurisdiction neutral also.

They must prohibit, and as far as possible prevent, their territory, their people, or foreigners, while within their borders, from contributing to the advantage of either side in the pending war. If a neutral nation fails in this, the party injured thereby holds it responsible, and may claim redress.

[3] Neutral nations may claim that no violence be done to their own sovereignty by any belligerent.

Over its territory and its territorial waters the jurisdiction and the sovereignty of the netural nations are as complete, and should be as inviolate, in time of war as in time of peace. On the high seas its war vessels may not be hindered or threatened. But a merchant vessel on the high seas, flying a neutral flag, may be stopped and searched by a belligerent to see that it has the right to carry its flag, and that it is not likely to furnish aid to either party in the war. This visitation and search should be courteously done, and the cargo of the visited ship should not be molested unless it be what is called contraband of war, that is, goods which a neutral cannot furnish either party in war without injury to the other.

We need to note and to keep in mind the fact that law and government are not the state, but only the agencies of the state. The state is the organic unity of mankind, that is, the unity in which the welfare of every human being is bound up with the welfare of all the rest, in other words, the unity in which each depends upon all, and all depend upon each. Law and government are the means by which this true and blessed unity becomes the living possession of the race. They represent the state, but must not be confounded with the state. Law and government are visible facts in the history of mankind, while the state itself is not

seen. But the state is not thereby any the less real or mighty. The movements of the stars are great and visible facts in the heavens, though no eye ever saw the power of gravitation by which these movements, largest and least, are all controlled.

International law expresses on the broadest scale the unseen potency of the universal state. National law expresses this same potency in the narrower range of the individual state. The individual state, as we have already noted, is properly a state because its separate organization as such best subserves the universal unity. If it ceases to subserve this it ceases to be. The history of individual states is, when viewed on a broad scale, nothing other than the record of their maintenance or their overthrow according as their government and laws have kept or have thrown aside the requirements of the state. As a general fact governments and laws have not permanently been overthrown and displaced by outside forces. They have only failed by internal deficiencies, chargeable to themselves alone. If there can be cited some obscure exceptions, it still remains the general rule that governments and laws and nations only die from suicide. This is what makes the history of the world so impressive and so instructive. History is wisdom — the wisdom of events — as the word itself in its first and literal meaning implies.

II.

NATIONAL LAW.

NATIONAL law, often called also municipal law, is the law of an individual nation. It differs greatly in different cases as the nations differ from each other. But in each case it expresses the rights and the duties of the government and the governed in a given state. Though the study of this in all nations is exceedingly interesting, we leave so broad a field for the present and confine ourselves to the national law of the UNITED STATES OF AMERICA.

National law divides itself everywhere into public law and private law.

[I.] PUBLIC LAW.

Public law is the body of rules for the orderly direction of the government, and private law is the body of rules for the orderly direction of the governed. Public law divides itself again into constitutional law which declares the rights, and administrative law which declares the duties, of the government, as private law divides itself into political law which declares the

rights and the duties of the governed concerning the government, and civil law which declares the rights and the duties of the governed concerning one another. Our first inquiry then is,

What is the public law of the United States of America?

The government of the United States is in one great feature different from that of any other people. It is the government of individual states, so called, each distinct and in its sphere self-directing, and it is the government of the same states by a union which has authority to command and power to compel their obedience. The individual states govern themselves in what chiefly concerns themselves separately, and they are governed by the union in what chiefly concerns their common welfare. Whatever the states can regulate for themselves without interfering with the harmonious relations of one another is, as a rule, left to their own management, but whatever reaches beyond this and involves the general harmony belongs to the government of the union. The governments of the states do not lose any of their own force by being brought under the government of the union, and the government of the union is not hampered or interfered with by leaving the governments of the states unrestrained in their sphere. Each in fact draws its

strength from the other. Such a double government is the grand feature to which every other feature is subordinate in the government of the United States. In considering this government we follow our main plan, dividing the topic into public law and private law as we should do in treating of the national law of any people. Under public law we take up:

1. *Constitutional Law.* (*Rights of Government.*)

Public law as already defined is the body of rules that expresses the rights and the duties of the government. In so far as it expresses the rights of the government we have termed it constitutional law. What then are the peculiar rights of the government of the United States?

[1] The right to represent the people.

In the government of the individual states and the government of the union the final authority rests with the people. They are the true rulers. Those invested with official station in the United States of America are in no true sense rulers of the land. They are only the agents whom the people employ and to whom they have given power to carry out their will. The ruler is not the chief man among the people but is the people themselves. The people are their own masters. From their will there can be no appeal. In no other land is the sovereignty of the people so marked as here.

This sovereignty of the people finds its first expression in the constitutions of the several states and the constitution of the union. These constitutions, which are the great charters of government among us, by which the form of the government is directed, and every officer and procedure thereof must be controlled, are ordered in the first place expressly by the people, and can in any case be changed only as the people have given their consent.[1]

The constitution of the United States begins with these words: "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America." In like manner the constitution of every state of the union more or less expressly indicates that the final appeal for all authority in the government which it establishes is to the sovereign will of the people.

[1] This is true of all the states except Delaware. This state permits an amendment to the constitution to be enacted by the legislature, but requires that the amendment, in order to be adopted, must be approved by two successive legislatures, and that before the second legislature which is to pass upon it is chosen, the amendment must be clearly set before the people.

But what is the meaning of this? In what sense are we to speak of the sovereignty of the people of these United States? The question is exceedingly important and the answer is not difficult, though it needs to be carefully stated. Sovereignty, in the literal sense of the word, means supremacy. It cannot exist unless supreme. Hence the constitutions and laws of the people, their governors and legislators, are not sovereign. These cannot be supreme since they can be changed or unchanged, made or unmade, by the people's will. Neither can the people themselves as individuals be sovereign, for these are changing all the while as their generations come and go. But the pattern of the people, after which they are made and which we must remember is their real and peculiar nature, does not change with their changing generations, and the requirements of this pattern are the supreme fact and sovereign force in all the history of the people. This is the real and rightful sovereignty of the people. It is not what they claim simply because it is their will to have it so, but it is what belongs to them in right and reason, which they can claim because originally theirs, — in other words, because it is the orderly arrangement of their affairs, the arrangement conformable to the pattern in which they had their origin.

But in this sense sovereignty is true of every people, since every people has its original pattern which determines supremely what is the true order of the people's life. The peculiarity of this in the United States is that the people here have the power to choose and to actualize this for themselves. This power is their freedom. Freedom is not the power of the people to do as they please or, as we say, to make their own government and laws. Freedom requires law. Freedom is the child of law. It is in the first place and ever obedience to law. It is ever the creature and never the creator of law. The freedom of the American people is their power to see, and their power to put themselves under, their rightful law. Their freedom is true because it represents their rightful sovereignty. Their choice is free because it is the choice of what makes them free. They are sovereign because and in so far as they adopt for themselves this original sovereignty.

No one who carefully studies the history of the United States will fail to be impressed with the reality and the significance of this sovereignty of the people. The history of the United States is conspicuously other than the history of its great men. It is the history of the people and their movements as they have been led by inspirations, of which the great leaders of the people,

as we call them, have often been less conscious at the first than have been the people themselves. Our great leaders have not moulded, but have been shaped by the public opinion of the nation. They have been trusted and followed only as they have been able to see the real movement of the people and to put themselves in its van. Whenever the movement of the people has been real and deep, it has been resistless. Men who have sought to stem it have been swept away or engulfed by the rising tide. The great changes in our national life have been brought about by what we can only call the instinct or the inspiration of the people. They have not come from anybody's conscious plan or purpose. This is seen all through our history, a single illustration of which may be taken from our method of choosing our president. This method, as originally prescribed in the constitution, provided that the president should be chosen by electors appointed in each state, "in such manner as the legislature thereof shall direct," and these electors, it was originally intended, should deliberate and exercise their own wisdom in their choice. But all such deliberation has ceased. The electors no longer choose. They simply register the choice of the people. The people, through their nominating conventions, select the candidate to be voted for as president and vice-president, and the

electors chosen by the majority of the votes of any state meet, and by an unwritten law, quite as potent as if laid down by the constitution itself, they simply put on record what the people have declared. If an elector should do otherwise, though he might not be subjected to any formal punishment, he would be adjudged false to his trust, and be cast out and despised. The history of no other people has been so conspicuously marked by the sovereignty of the people as our own.

It might be difficult to outline this sovereignty so as to present a distinct shape like a visible monarch before our eyes, but it is none the less a fact, and without it our history would have no explanation.

But does this sovereignty of the people belong collectively to the people of the union, or does it inhere in the people of the individual states? Undoubtedly the broader relation must include the narrower one, and the sovereignty of the people of the United States must rest ultimately with the people of the union. But just as plainly do we find the actual exercise of this sovereignty to be with the people separated in the states and not in the collective body of the people of the union. In no case do the people of the union act as a collected body. Their action is always bounded by state lines, but when acting thus, we need carefully to

note, the people of no one of the states are by themselves sovereign. They must be joined by the people of other states, acting also within state lines, before their action can have the quality of sovereignty.

[2] The right to enact laws. (Legislative Department.)

Government in the United States is only the agent of the people, and is appointed by the people to do the work of governing them. The people first frame their constitutions of government, — constitutions of the separate states, and constitution of the union, — in which the officers of the government and their functions are defined, and then these officers are appointed and invested with their rights and charged with their duties as the constitution in each case prescribes. If the officials, to whom the work of governing the people is intrusted, fail to do their work satisfactorily to the people, they are set aside and others put in their places. This is the way in which the people here govern themselves.

Referring to our definition of government as the power that rules, — that is, the power which sets and keeps in order, — we can see that the first element of this power is the power to lay down laws which, as we have already noted, are nothing other than rules of order. Every government, therefore, must have what

we call its law-making power, — though when we speak of law making in this sense, it would be more proper to say law declaring, since laws of the state, like all the laws of nature, are, strictly speaking, discovered and announced, not made. The great statesman, like the great man of science, is he who has the clearest eye to see, and the clearest voice to utter, the unmade law.

This power of the government to set forth the law is the legislative power. In the United States this power is not only carefully discriminated, but is definitely put into different hands from those holding other powers of government. In the governments of the different states this power is held by the legislatures, and in the government of the United States it is held by the congress. The legislatures of the states, and the congress of the United States, have certain notable features in common. They are all representative bodies, that is, bodies to whose members the people have given the right to act for them in framing the laws which the people are to obey, — a method of legislation never known in the ancient world. These bodies are all strictly confined within the limits set by their respective constitutions, the legislatures of all the states like the congress being also bounded by the constitution of the United States. Each legislature, as also the con-

gress, is composed of the two branches called, respectively, the House of Representatives and the Senate,[1] and every law must have the approval of both these. Of these two branches the House of Representatives is the larger, its members representing narrower districts and smaller constituencies than those of the Senate. In the congress, the Senate represents the states, its members being chosen by the state legislatures, while the House of Representatives represents the people of the states, its members being chosen by the people. Each state is entitled to two, and only two senators in the Congress of the United States, while the number of representatives chosen in each state depends upon the population of the state. The term of office for representatives in congress is two years, and for senators six years. In many of the state legislatures also the term of office for senators and representatives is of different lengths. Every representative in congress must have reached the age of twenty-five years, must have been seven years a citizen of the United States, and must, when elected, be an inhabitant of that state where he shall be chosen. Every senator in congress must have reached the age of thirty years,

[1] In New York State, the House of Representatives is called the Assembly; in New Jersey, the General Assembly, and in Virginia, the House of Delegates.

must have been nine years a citizen of the United States, and must, when elected, be an inhabitant of that state where he shall be chosen. No member of either house can hold any office under the United States during his continuance in congress. The qualifications of representatives and senators in the different state legislatures are given in the different state constitutions. This two-fold division of the legislative power is to secure greater care and wisdom in the laws which may be passed.

To the state legislatures, and not to the congress, belongs the great bulk of our laws. The rules of order for the most important interests of life, — the control of the family, the education of children, the conduct of business, the various and complicated relations of society and the individual life, so far as these are not expressly limited by the constitution of the union, — are all regulated by the laws of the individual states. But the individual states are, by the constitution of the United States, forbidden to coin money, or to make anything but gold and silver coin a tender in payment of debts, or to pass any bill of attainder, that is, a law inflicting capital punishment upon a person for a crime of which he has not been convicted by a judicial tribunal, or any *ex post facto* law, that is, a law making an act criminal which was not contrary to law

when the deed was done, or any law impairing the obligation of contracts, or a law granting any title of nobility. Still further, no state may, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws. Nor may any state, without the consent of congress, keep troops or ships of war in time of peace, or enter into any agreement or compact with another state, or with a foreign power, or engage in war unless actually invaded, or in such imminent danger as will not admit of delay.

The right to legislate upon matters of the gravest public concern is expressly conferred upon congress by the constitution. Such matters are those relating to war and peace, to the regulation of commerce and other intercourse with foreign nations and among the several states, to the coining of money and the standard of weights and measures, to the laying and collecting of taxes, duties, imposts and excises, — all of which, so far as levied by congress, should be uniform throughout the United States, — to the punishment of counterfeiting, to the establishment and control of the postal system, to the granting of patents and copyrights, and to the punishment of offenses against the laws of nations. Laws concerning all these matters are excluded from state legislation and belong to congress

alone, except that the right to levy taxes, a right essential to any government, may be exercised also by the individual states, subject, however, always to the restriction of the constitution. The constitution also confers upon congress the right to enact uniform laws for all the states on naturalization and bankruptcy, but if congress does not do this the states can legislate upon these matters for themselves, though no state law may impair the obligations of contracts. Congress has no right to legislate upon any matter where the power to do this is not expressly given or fairly implied in the constitution.

[3] The right to enforce the law. (Executive Department.)

It is not enough that a government lay down its laws. Unless it has the power to compel obedience to these the laws are idle and the government a nullity. The ruler beareth not the sword in vain.

As the law-enacting power is called the legislative, so the law-enforcing power is called the executive department of the government. In the different states of our union the chief executive officer is the governor, though in all the states the execution of the law is made by the law itself dependent upon local organizations, such as the county, the town, the city, the village, and the borough. These local organizations

have their officers appointed, in most cases by popular vote of the organization itself, to whom within their respective bounds are given the authority and the power to execute the law.

The chief executive officer of the United States is the president, and upon him is conferred great power. The constitution declares that the executive power of the government shall be vested in him. He is the commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States. He nominates, and by and with the advice and consent of the senate, appoints all the subordinate executive officers of the government, except those inferior officers for whose appointment congress may have provided otherwise. All of these officers are directly responsible to him and are removable from office at his pleasure, except as the constitution and congress may otherwise enjoin.

The president is directed to give, from time to time, information and advice to the congress upon such matters as he may deem necessary and expedient, and every bill passed by the house of representatives and the senate must be sent to him for approval. If he approves and signs it, it becomes a law; if he disapproves it, he is directed to return it with his objections

to the house in which it originated. This is called his veto. If the congress shall repass the bill by a two-thirds majority in each house it becomes a law, notwithstanding the president's veto. Otherwise it fails. If the president neither approves nor vetoes a bill within ten days, Sundays excepted, after it has been sent to him, it still becomes a law, unless the adjournment of congress shall have made its return impossible.

The qualifications of the president are that he should be a natural born citizen of the United States, that he should be thirty-five years of age, and that he should have been fourteen years a resident within the United States.

His term of office is four years and he is reëligible for any number of terms, though as no president has ever been reëlected more than once, two terms have practically become his limit.

The president is chosen by electors appointed for this purpose by the different states. The number of electors in each state is equal to the whole number of senators and representatives to which that state is entitled in congress, though no senator or representative or any person holding an office of profit or trust under the United States may be appointed an elector. The electors of each state meet by themselves at a designated date and place, — the date being the same

for all the states, — and cast their ballots for president and vice-president, one of whom may not be an inhabitant of the same state with themselves. The ballots thus taken having been sent to Washington are opened and counted in joint session of the two houses of congress, and if any person named for president is found to have a majority of all the electors he is duly declared chosen, and the same is true of the vice-president. But if no person shall have such a majority, the house of representatives, voting by states, each state having one vote, must choose a president, and the senate, a vice-president.

The vice-president is made by the constitution the presiding officer of the senate. He has no other official duty. In case of the removal of the president, or his death, resignation or inability to discharge his duties, the vice-president becomes president for the remainder of the term.

The president's term ends and begins on the fourth of March, every fourth year. The electors are chosen on the Tuesday following the first Monday in November of the preceding year. They meet to cast their votes in the capitals of their respective states on the first Wednesday of December, and their ballots are opened and counted at a joint session of congress on the second Wednesday of February.

[4] The right to adjudge the law. (Judicial Department.)

Laws may be enacted and enforced, which are nevertheless wrong, and a government which would establish justice should have the power to judge whether its laws are right, and what is their righteous application. This power brings into exercise the judicial in distinction from the legislative and the executive departments of the government. Formerly in other nations as a general fact, which is also in our times frequently the case, these three departments were administered by the same officials who acted with the same authority alike in the enactment and execution and passing judgment upon laws. But in our own country, both in the government of the states and in that of the United States, great care has been taken to put these different functions into different hands. This is in order to secure an unbiassed and more careful exercise of each.

To carry forward the judicial department of the government, certain tribunals are established, called courts of justice. These courts vary in number and procedure in the different states, but they all agree substantially in principle, and they may be classified under the same general divisions. They are all tribunals to establish justice. To this end the questions that come before them are chiefly two: first, is the

law in a given case constitutional; second, what, in the pending case, is its proper application?

There are generally four kinds of courts, of a lower and a higher grade, in each of the different states, a party to a case having ordinarily a right to appeal from the decision of a lower court to that of a higher one. The first and lowest is what is called a justice's court, or court of a justice of the peace, held by an officer of that name, where petty offenses against law and order and suits for trifling sums are tried, and where graver offenses often are inquired into, and if deemed fit are sent to a higher court for settlement. The second class, called the county or municipal court, with jurisdiction confined to the county or the municipality, is a grade higher than the justice's court, and can try cases of a graver, but generally not of the gravest import. The third class, called the superior court, or often the district or circuit court, whose jurisdiction extends over a much wider district than the county or the city, tries cases on appeal from lower courts, and there may be also brought before it originally the gravest questions of law and order. The fourth class is the supreme court, before which as a general fact cases cannot be brought originally, though this is permitted in some of the states. In most of the states, however, the supreme court is exclusively a court of appeal. Besides

these four there is in some of the states a fifth class, called the court of appeals, or the court of errors and appeals, which is empowered to judge in certain cases on questions of error in decisions of inferior courts. In some of the states also courts of equity are held where cases may be adjudged on general principles of equity, rather than on the strict terms of the statute law. All these courts, except the first-named, keep an official record of their proceedings, and are thus called courts of record. To these state courts the great bulk of our judicial decisions belongs. In many of the states there are also separate probate or surrogate courts before which matters concerning wills and the settlement of estates are brought.

The judicial department of the United States is by the constitution "vested in a supreme court, and in such inferior courts as the congress may from time to time ordain and establish." The constitution also provides "that the judges, both of the supreme and the inferior courts, shall hold their office during good behavior, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office." These provisions are in order that the judges may discharge the duties of their high office in independence, and be as free as possible from all personal consideration. Agreeably to the

power thus conferred, congress early established two special classes of courts of the United States, called the district courts and circuit courts. The district courts are of a lower grade, and are the more numerous of the two, one being established in each state, and in some states more than one. There are at present (1894) in all sixty-six of these district courts. The circuit courts embrace each several states, there being at present nine for all of the states of the Union. The circuit courts, as originally constituted, were not courts of appeal, and could only adjudge cases first brought before them ; but to relieve the pressure growing out of the vastly increasing business of the supreme court there has lately been organized, by act of congress, March 3, 1892, in each circuit, a circuit court of appeals, before which cases can be brought on appeal. Its decisions are final.

Each district court and each circuit court has one judge. The supreme court has nine, consisting of eight associate justices and the chief justice. The supreme court holds one session annually at Washington, and each of the other courts two in each district. To each circuit, besides the circuit judge, there is allotted by the supreme court itself one of its own justices, who is required by law to hold at least one term of court, besides the ordinary session which the

circuit or district judge attends, in each district of his circuit during every period of two years. These courts have jurisdiction in all cases of law and equity arising under the constitution and laws of the United States, or under treaties made under their authority. The decisions of these courts, when rendered, carry with them the full power and authority of the government. Besides these courts there is also a United States court of claims, before which claims upon the treasury of the United States may be presented, and by which they may be adjudged.

2. *Administrative law.* (*Duties of Government.*)

Administrative law is the body of rules which express the duties of the government. Strictly speaking, and in the most comprehensive sense, all government rights are government duties. The government is not like its subjects, each of whom is at the same time the means and the end of all the rest. Government is always a means, never an end. It is ever for the sake of its subjects. They are never for its sake. If they could gain their best ends without its aid, all necessity for government would disappear. But this can never be. Even if everybody were willing to do what is best, he could not always know what is best, and the best disposed community, therefore, must always need a government to define and interpret for it its true rules of

order. On this ground only can government claim anything for itself, and in this sense alone can we speak of the rights of government. But its duties are clear and all-embracing.

[1] The duty of being a government of laws and not of men.

This, which is even formulated as such in the constitution of Massachusetts, is the prime duty of government everywhere in the United States. The will of every officer of the government, — legislative, executive or judicial, — is subject to a higher will than his own. The constitution and laws are above him in whatever he does, and in the more important offices he takes his oath to preserve, protect and defend these. This does not mean that the constitution and the laws mention every step for every officer in every case, for this would be not only intolerable, but impossible. Every officer must have a field more or less extended, which the law has not particularly mapped out and where he can only act, as the call for action comes, at his discretion. But even then he cannot set up his individual will in place of the law. He can only follow his own best judgment of what the law would have said, had it spoken in a given case, and if he make a mistake about this, both he and his judgment are liable to be set aside by the outworking of the law itself.

The law makes clear provisions to rectify official mistakes and to punish the offending official. In no other government does the mere will of an individual officer count for so little, and in none are his mistakes and failures so surely, if not always so speedily, corrected as in the government of the United States.

[2] The duty of making the law a guardian of liberty.

The constitution of the United States declares that "neither slavery nor involuntary servitude except as a punishment for crime whereof the party shall be duly convicted shall exist within the United States or any place subject to their jurisdiction." It further provides that "no state shall deprive any person of life, liberty or property without due process of law." Due process of law means a process according to the forms and rules which have been established for the protection of private rights. It is a procedure before a lawfully constituted judicial tribunal wherein an aggrieved party has the right to an impartial trial of his case in open court with witnesses and counsel for his defense. It is intended to secure for every one what is justly his, and to protect every one not only from arbitrary and oppressive legislation, but also from all arbitrary and oppressive exercise of executive or judicial power. Hence the constitution of the United States affirms

that "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated," and declares that "no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized." To still further guard against oppression it is the duty of the government, — which cannot be suspended except in time of war, — to give to every arrested person the privilege of *habeas corpus*, that is, the privilege of being brought in person immediately before a judge who may judicially determine whether the prisoner may then and there be set at liberty. The government is forbidden by the constitution to require excessive bail or impose excessive fines or inflict any cruel or unusual punishment. Nor may the government hold any person to answer for a capital or otherwise infamous crime, except in cases connected with the military and naval service, without the presentment or indictment of a grand jury, that is, without the accusation of at least twelve impartial men empowered to sift the charges and judge whether they are sufficient to warrant the trial of the accused; and after such a presentment it is made the duty of the government to give the party accused of crime a speedy trial in open court by an impartial jury of the

state and district where the crime has been committed, to inform him of the nature and cause of the accusation, to confront him with the witnesses against him, to give him its own compelling power to summon witnesses in his favor and to furnish him the assistance of counsel for his defense if he is not able or does not choose to do this for himself. He may not be compelled to be a witness against himself, nor may he be for the same offense "twice put in jeopardy of life or limb." Many of these duties of the government were seen and accepted as such in the clear light of English law and liberty, but they are guarded in our constitution, not only with more strictness than they are in England, but more carefully than they are in any other government in the world.

The duty of the government to guard the liberty of the people binds not only the government of the union and that of the individual states, but also that of every city or town or district of the land, and every person anywhere in the United States may insist upon the enforcement of this duty in his behalf.

[3] The duty to give to all its subjects the equal protection of the laws.

The constitution of the United States expressly provides that no state shall "deny to any person within its jurisdiction the equal protection of the

laws." This means that all persons under the government of the United States, of either sex, and whatever their age or race or station, shall be treated by the laws exactly alike. There shall be no favoritism, no recognition of class privileges under the law. The whole power of the people and all the resources of the government, — legislative, executive and judicial, — may be summoned by or in behalf of every man, woman or child in the United States, against injustice and oppression. No state may touch the life, liberty or property of any person without due process of law, and no state, even with due process of law, may deny to any one within its jurisdiction the equal protection of the laws.

[4] The duty of the government to make these liberties perpetual.

The constitution provides that "the United States shall guarantee to every state in this union a republican form of government and protect it against invasion." No state, therefore, whatever its wishes or its dangers from outside interference, can be divested of its liberties until the whole power of the union is subverted.

To a citizen of the United States the lines have fallen in pleasant places and he has a goodly heritage.

[5] The duty of educating its subjects.

Education does not take care of itself. If left to undirected impulses, these soon become erratic and weak, until at length they cease entirely, and education ceases. Explain it as we may, human nature has a curious tendency to throw away its privileges, and the best educated community will not maintain itself as such without some governmental control. The best educated communities in the world are those where government control in matters of education has the largest scope. In the United States the control of education does not belong to the general government, but is left to the individual states, all of which have, through their several legislatures, made provisions more or less careful and copious for the education of their subjects. The duty of doing this will not now be widely denied.

[II.] PRIVATE LAW.

Private law is the body of rules for the orderly arrangement of the governed. It has two divisions, which we have termed political law and civil law.

A. Political law.

Political law expresses the rights and the duties of the subjects respecting the government.

1. *The rights.*

Strictly speaking all the duties required of a government towards its subjects are rights which the subjects

can claim. What we have just considered, therefore, as duties of the government might also be classed under the rights of the governed. It is better, however, to treat them as we have done, while we speak here of those rights of the governed which come closer to their personal and spiritual life.

[1] The right to religious freedom.

Religion is a union with God. It means worship or homage rendered to a supreme being, and this, as both history and human nature testify, is the highest and deepest necessity of the human soul. But this is impossible without a free choice. Worship or homage would be unmeaning unless free. Every one, therefore, has the right to religious freedom. This does not mean, however, the right to do in the name of religion whatever the religion may enjoin, for this might be disorderly. But it means that every person has the right to hold, without interference by the government, his own religious beliefs, and to carry these out in practice so far as this can be done without disorder. The Constitution of the United States declares, "that Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof." And the constitutions of the several states have similar provisions concerning the same. The Constitution of Massachusetts, for example, fairly expresses

the general provision of the different states on this subject when it declares "that it is the right as well as the duty of all men in society, publicly and at stated seasons to worship the SUPREME BEING, the great Creator and Preserver of the Universe. And no subject shall be hurt, molested or restrained in his person, liberty or estate for worshiping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace or obstruct others in their religious worship."

[2] The right to free thought.

The power of thought has been given us for the discernment of the truth, and there are no proper limits to its exercise but those which the truth itself has set. Freedom of thought is an inalienable birthright of the human soul. To abridge it through governmental interference by punishing one for his opinion is an intolerable despotism. Freedom of speech and of the press follow from the right of free thought, and these are especially guarded in our different constitutions, the constitution of the union declaring that congress shall make no law abridging "the freedom of speech or of the press." But here again we need to note, as repeatedly before, the difference between freedom and license. Freedom of speech or of the

press does not mean unlimited permission to speak or write or print whatever one pleases. However unlimited may be one's right to his own opinions, he may by uttering these invade the rights of others, and this he has no right to do. He may not become a disturber of the public peace by inciting through speech or print to sedition or public violence. He may not become a corrupter of morals by printing pestilential literature. He may not injure the good name of another by slander or libel. It may not be always easy to determine just when and where governmental interference should take place, but the principle is clear, that while every person may hold his own opinions without molestation from the government, any expression of these which interferes with the public freedom, the public through its government has the right to put down.

[3] The right of suffrage. (Free Representation.)

The pattern, whose requirements are the laws of human society, is mirrored with more or less clearness in every human soul. Every person feels the obligations binding him in that reciprocal fellowship which, we have before noted, is the foundation of human society. The state, therefore, finds itself represented in every person belonging to the state, and the will of each individual person ought to express, — and if

unbiased does express, — the universal will of the state. Every person, therefore, might claim the right to be represented in the government of the state by his free vote. In a free government every subject should have his share in the sovereignty.

Though suffrage is usually considered as a privilege which the government confers, rather than as a right which a person may claim, yet the restrictions which governments actually attach to the exercise of this privilege practically concede its right to every person likely in the eye of the government to exercise it in freedom. Thus persons under twenty-one years of age are excluded from voting because such persons are supposed to lack the maturity requisite for the free exercise of their own choice. So also when suffrage is denied to certain classes, — as in some states to those unable to read or write, or to those without a certain property qualification, or to those who have made a wager on the result of the pending election, or received a bribe, or to criminals, insane persons, or idiots, or to foreigners bound by allegiance to another government, — in all these cases the denial of suffrage is because the parties prohibited from exercising it are thought to lack the full freedom requisite for an unbiased choice. The sovereignty of the people has no meaning unless each free person among the people

may express by his vote how the sovereignty should be directed.

In the United States the general government does not define the right of suffrage. This is left to the governments of the individual states, which limit or extend the exercise of this right at their discretion. The constitution of the union, however, commands that the "citizens of each state shall be entitled to all privileges and immunities of citizens of the several states," and declares also that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or any state on account of race, color or previous condition of servitude."

2. *The duties.*

[1] The duty of obedience.

In that organic unity which is the state, each person depends for his welfare upon every other and every other also depends upon him. This is the fellowship in which the human life upon the earth is actually bound. The government of the state is only necessary to express and enforce what this fellowship requires. It sets each person in the place and exacts of each the conduct which will best subserve the organic unity. The law lays upon each what is best for each and for all. It therefore ought to be obeyed, not simply because it is commanded, but

because the command does but utter the living need and actual mandate of the very person to whom it comes. No person, therefore, can afford to be a law-breaker. Even if he should break the law in secret and the government fail to detect and punish him, he could not fail to have harmed himself vitally by his transgression. His transgression, however secret, is a wound to that living organism on whose perfection his own perfection depends. It is true that the government, administered as it is by human agents, is fallible and may make mistakes, but under a free government like ours these mistakes are not to be remedied by disobedience nor by revolution, but by free speech and by a free vote. Where speech is free and suffrage free, a mistake of the government needs no other means than these for its correction. The government of a free people may need to be peaceably reformed, but never violently revolutionized.

All inciting to lawlessness, all seditions or mobs or violent uprisings against the government, however justified as a last resort against tyranny, can have no excuse in a land of freedom. Every person here should be law-abiding, and should do his best to keep others so.

[2] The duty of service.

Beside the duty of obedience, every person owes to the government his personal service, or, as the Consti-

tution of Massachusetts expresses it, "its equivalent," when necessity requires. This may be the service of a witness when a person is called to testify in court in a pending trial. In such a case, he has the right already guaranteed him by the constitution, to refuse to criminate himself. But aside from this he is bound to aid the government in its administration of justice by telling, so far as he knows it, the truth, the whole truth, and nothing but the truth. The service required may be to act as a juryman, who must give up for a time his own business, and give himself without prejudice to the duty of determining what are the facts in a pending question of justice; or it may be in case of riots, or any violence, when the execution of the law is restrained by a force which the ordinary agencies of the law cannot overcome. At such a time the sheriff of the county is empowered to summon to his aid in maintaining the law any, or, if need be, every able-bodied male person not under fifteen years of age, in the county. This is called the *posse comitatus*, or the power of the county. Again, there is the requirement of military service, which may call on one to sacrifice his liberty, and if need be, his life, for the good of his country. In this or any other way, to the extent of his power, a good citizen will be ready to serve his government.

[3] The duty of tribute.

The right of the government to tax its subjects, and the duty of the subjects to pay tribute to the government, cannot be questioned on any ground. Government without taxation would lack the means of its own existence, and a people without government would lack the social organization upon which the very existence of their wealth depends. Wealth is what may be exchanged, and cannot exist without a community of persons with reciprocal wants. Gold and silver to any amount is not wealth until it is put into the hands of some member of society and becomes a means whereby he can both serve others and receive service from them in return. It is wise and right, therefore, both for the government to tax and for the governed to pay taxes. But the adjustment of taxation, in a wise and right way, is very difficult, well nigh as difficult as it is important. The course of the government upon this matter touches the welfare of every man, woman and child within its jurisdiction, and leads to results often so intricate, and always so various, that the clearest and most comprehensive vision of the statesman is needed to foresee them. Hardly any practical question of government requires greater caution.

In the United States taxation belongs both to the government of the union and to that of the states. The

different states have their own different rules and systems of taxation, but they are all shut out from certain lines by the Constitution of the United States. In general terms it may be said that no state may tax any of the constitutional means employed by the government of the union to execute its constitutional powers. Thus, under the power given by the constitution to congress to regulate commerce, it has been decided that no state may tax or impose restriction upon the sale of imported goods while in their original package and in possession of the importer — a restriction which does not apply to goods imported and in the hands of the retail trader, — and also that no tax can be imposed on the transportation of goods from one state to another. The constitution of the union also forbids any state, without the consent of congress, to lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and directs that "all duties, imposts and excises, which congress itself may order, shall be uniform throughout the United States." Still further, the power given to congress to borrow money on the credit of the United States, has been decided to imply that a state tax on stock issued for loans made to the United States is unconstitutional, because it is a tax on this power of congress. All taxing by any state of the bonds of the

United States is therefore repugnant to the Federal Constitution, and could not even be granted by congress to any state.

Within these restrictions the different states may levy their taxes as their best judgment may direct, the constitutions of the different states defining with more or less minuteness the limits thereof. Within the state also, under restrictions which the government of the state imposes, taxes may be laid by the county, the city, the town, the borough and the school or fire district. Taxes, however levied, it becomes a duty to pay. In default of payment the government can take forcible possession.

B. Civil law.

Civil law expresses the rights and the duties of the governed concerning one another.

1. *Social rights and duties.*

[1] The rights of voluntary compact.

The right of voluntary compact is the right to make contracts. A contract is literally a drawing together. It is an agreement of persons with one another to do or not to do some particular thing. All buying and selling, all borrowing and lending, all promises to pay,— in a word, all the bargains which link people together in the reciprocal interchanges of social life, — are contracts. In fact, to make contracts, — in other words,

to agree to do something for some one else, — is the business of mankind. Contracts do not exist in the animal world, and they are reduced to their least extent when society becomes reduced from a civilized to a savage state. They mark a condition of freedom and responsibility.

Our laws concerning contracts make a vast body. A few principles, however, penetrate and comprehend them all.

a. The right to make contracts belongs only to free persons. A slave could not make a contract. A contract made under a restraint which could not be overcome would, if brought before the courts, be set aside.

b. Persons under twenty-one years of age cannot make a contract, because they are supposed to lack the maturity requisite for freedom. Married women were formerly held incapable of making contracts because their free will was supposed by the law to be merged, so far as business engagements were concerned, in that of their husbands. Recent legislation in many of our states has changed this, and has given married women well nigh the same power in this respect as their husbands have. Insane persons or idiots, or persons intoxicated, can make no lawful contract.

c. The contract is to be enforced according to the law of the land where it was made. Contracts are often made in one land which are to be executed in

another. In such cases the general rule of the comity of nations, which we have already noted, gives to a contract valid where it was made, validity everywhere. The only exceptions to this rule are when the contract is deemed contrary to good morals or repugnant to the pronounced policy or institutions of the state.

The nature and construction of the contract, and the formalities requisite for its authentication and its discharge, are also to be determined according to the law where it was made.

[2] The duties of voluntary compact.

a. A contract must be founded upon sufficient consideration. A contract binding in law must be an agreement to do or not to do something in exchange for something else done or not done. An agreement without such a consideration, however binding morally, would have no force in law. In a contract signed with a seal the consideration need not be expressed, — the formality of the seal being thought a sufficient presumption of such consideration, even though this be not definitely expressed.

b. The contract may only be for such an object as the law can approve. A contract to do an unlawful deed could never be lawful, and would be set aside by the courts. The same would be true concerning a contract to do anything wrong.

c. When a contract has been lawfully made the actual intention of the parties thereto is to be carried out. No state may defeat this. In the constitution of the United States it is expressly provided that "no state shall pass any law impairing the obligation of contracts." Only the congress of the union in the exercise of its constitutional power to "establish uniform laws on the subject of bankruptcy throughout the United States" can do anything to set aside a contract lawfully made.

2. *Individual rights and duties.*

We have already noted under the head of political law how carefully the government guards the rights and the duties of individuals concerning itself. We now take up these rights and duties of individuals concerning one another.

We must remember all the while that every person in the organic state is the means and end of all the rest. In so far as he is the end of all, — his welfare being necessary for theirs, — he has certain rights which he can claim from them, and in so far as he is the means of all, — their welfare being needful for his, — he owes them certain duties which they can claim from him. These rights and duties are very wide-reaching. They embrace the inward thought as well as the outward deed. They require kindness, sym-

pathy and love from each to all and from all to each. They would knit human hearts together everywhere in brotherly fellowship and charity. But such wide-reaching relations are beyond the grasp of the civil law. Civil law can only deal with the outward deed. All the duties which it enjoins, and all the rights which it affirms, are fulfilled and satisfied by the outward conduct of individuals, whatever their inner life may be. This conduct will express itself in one's treatment of the person, the property or the reputation of another, and therefore all the treatment of one another which the civil law requires of its subjects will relate to these threefold comprehensive interests of the human life.

[1] The rights and duties relating to the person.

These may all be grouped under the one head of personal security, and this is three-fold: security of life, security of body or limb, and security of freedom. Every member of the organism has the right to claim this security for himself in each of these respects, and equally the duty to be faithful to this right in another.

First: security of life. In lawful warfare, or in executing as an officer of law the sentence of death upon a criminal lawfully condemned, or in the exigencies of self-defense, one may lawfully take the life of another. So, also, if one lawfully tries to arrest another and is assaulted or forcibly resisted, he may lawfully take the

life of the party assaulting or resisting, if he cannot otherwise execute his purpose. Or again, if one charged with the maintenance of order is confronted with violence and turbulence, not otherwise to be overcome, he may destroy life to restore order. Still further, the taking of life is permissible to prevent some great crime, as an attempted burglary or murder, or assault upon a member of one's family. Nevertheless, life is most sacred and is most sacredly guarded by the law. To take life with malice aforethought is murder, a crime to which attaches the heaviest penalty of the law. Generally, the world over, this penalty is death, — a witness of the deep-seated sentiment in the human heart that the murderer ought not to live. To conspire to murder, even if the conspiracy is not carried out, is still a crime on which the law puts a heavy penalty. To take life in the sudden heat of passion or through culpable carelessness or negligence, though called by the courts manslaughter instead of murder, is a crime with a heavy penalty, even though not punishable by death. To take one's own life, though not punished, is severely condemned by the law, and to induce another to do this is to be guilty of murder.

Second: security of body and limb. The security of body and limb is as carefully guarded by the law as

is the security of life. Every person has a sacred right to his own, and must sacredly regard this right in another. To lay hands violently or in malice upon another's body or limb is a misdemeanor, punishable by the law, however slight the injury may be. "The law," it has been said by a great master, "cannot draw the line between different degrees of violence and, therefore, totally prohibits the first and lowest stages of it, every man's person being sacred and no other having a right to meddle with it, in even the slightest degree."[1] Nevertheless, in cases of aggravated assault the law may provide a penalty correspondingly severe and may exact from the offender a compensation to the injured party for his injury. The general principle of the law is clear that no person may do any harm to another.

Third: security in freedom. Freedom here as elsewhere, we must remember, is not the power of a person to do as he pleases. Freedom is ever obedience to the law. Lawlessness is always the one intolerable condition of human society, from which society frees itself even though exchanging it for a despotism. There is a constraint of the law setting bounds to wherever one may go or stay; but within these bounds every person has the right to go or to stay where he

[1] Blackstone, III, 120.

pleases, and every person has the duty to yield this right to every other one. Our government, as we have already seen, like the government of every free people, is most carefully guarded against interfering with the personal liberty of its subjects, every one of whom is as carefully restrained by the government from any interfering with the liberty of another.

[2] Rights and duties relating to property.

Property is whatever one has the right to use as his own. There are two kinds of property. That which can be carried about with the owner, as goods or money, is called personal property, and that which is fixed and cannot be carried about, like houses and lands, is called real estate. By the constitution of the United States, and by those of the different states, every person is guaranteed in the possession of his personal property, but in some of the states a foreigner cannot, without special permission, hold real estate. But whatever personal property any one may lawfully acquire, or whatever property of any kind a native-born person may lawfully gain, he may use as he will, so far as he does this without injury to others, subject only to the claim of the government upon it for taxes. To deprive another of his property through fraud or theft is a crime for which the law makes copious provision by inflicting a penalty or compelling restitution.

[3] Rights and duties relating to reputation.

A good name is worth more than great riches, and every one has a right to this except as forfeited by his own deed. The good order of society depends upon the good repute of its members. Both for the sake, therefore, of the individual and of the community, civil government guards the reputation of its subjects.

The law recognizes two ways in which a person's good name may be unlawfully threatened, — by slander, which is simply an oral defamation, and by libel, which defames by the pen and press. A libel, as involving more deliberation and as having greater currency, is in the eye of the law the more reprehensible, and is treated with the greater severity. The law upholds a suit for damages on the part of the injured person against either the slanderer or the libeler, while the one guilty of libel is also punishable for a crime.

3. *Natural relationship.*

The chief natural relationship with which the law concerns itself is that of parent and child. The rights and the duties of each of these are defined by a few comprehensive principles. The parent has the right to the obedience and service of the child, and it is the child's duty to render these. This right and this duty are affirmed by universal reason and are enforced everywhere by the laws of the state. The parent has

authority to command his child and the law upholds this authority by giving him the power to chastise the child when he refuses to obey. This authority and power the parent may also delegate to tutors and governors who may exercise them in his stead. The parent may not command anything unlawful nor may his chastisement be unduly severe, but within these restrictions parental authority and power are fully and properly sustained by the law of the land. When the child becomes able to render any service the parent is entitled to receive it, and if the child earns any money by his labor this also belongs to the parent. This right and duty of obedience and service continues until the majority of the child, except when the child has been permitted by parental consent, expressed or implied, to control his own earnings.

The child has the right to receive maintenance, protection and education, and it is the duty of the parent to provide these. If the parent neglects his duty in these respects the law comes in with its compulsion. As the requirements of a child's education may reach far beyond a parent's power, every enlightened state establishes its own schools and compels each parent to send his children to these, unless he can show either that they are unable to attend or that they are otherwise provided with adequate instruction.

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